

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

PRAGMATUS TELECOM, LLC,

Plaintiff,

v.

ADVANCE STORES COMPANY,  
INCORPORATED AND E-ADVANCE, LLC

Defendants.

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Civil Action No. 12-088 (RGA)

**Jury Trial Demanded**

**PLAINTIFF’S THIRD AMENDED COMPLAINT**

Pragmatus Telecom, LLC (“Pragmatus”), by and through its attorneys, for its Second Amended Complaint against Defendants Advance Stores Company, Incorporated (“Advance”) and E-Advance, LLC (“E-Advance”) (collectively, “Defendants”), hereby alleges as follows:

**I. NATURE OF THE ACTION**

1. This is a patent infringement action to end Defendants’ unauthorized and infringing making, use, sale, offering for sale, and/or importation of systems and methods incorporating Plaintiff Pragmatus’s patented inventions.

2. Pragmatus is owner of all right, title, and interest in and to: United States Patent No. 6,311,231 (the “’231 Patent”), issued on October 30, 2001, for “Method and System for Coordinating Data and Voice Communications via Customer Contact Channel Changing System Using Voice Over IP”; United States Patent No. 6,668,286 (the “’286 Patent”), issued December 23, 2003, for “Method and System for Coordinating Data and Voice Communications via Customer Contract Channel Changing System Using Voice Over IP”; and United States Patent No. 7,159,043 (the “’043 Patent”), issued January 2, 2007, for “Method and System for Coordinating Data and Voice Communications via Customer Contract Channel Changing

System” (collectively, the “Patents”). True and correct copies of the Patents are attached hereto as Exhibits 1–3.

3. Defendants’ use infringing products and provides infringing services in violation of the Patents. Plaintiff Pragmatius seeks injunctive relief to prevent Defendants from continuing infringement of Plaintiff’s patent rights. Plaintiff Pragmatius further seeks monetary damages and prejudgment interest for Defendants’ past infringement of the Patents.

4. This is an exceptional case, and Pragmatius is entitled to damages, enhanced damages, attorneys’ fees, costs, and expenses.

## II. THE PARTIES

5. Plaintiff Pragmatius is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 601 North King Street, Alexandria, VA 22314.

6. On information and belief, Advance is a corporation organized and existing under the laws of the State of Delaware, with a place of business located at 5673 Airport Road, Roanoke, Virginia 24012. Advance can be served with process by serving its registered agent for service of process in the State of Delaware, National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904.

7. On information and belief, E-Advance is a corporation organized and existing under the laws of the State of Delaware, with a place of business located at 5008 Airport Road, Roanoke, Virginia 24012. E-Advance can be served with process by serving its registered agent for service of process in the State of Delaware, National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904.

**III. JURISDICTION AND VENUE**

8. This is an action for patent infringement which arises under the Patent Laws of the United States, in particular, 35 U.S.C. §§271, 281, 283, 284, and 285. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§1331 and 1338(a).

9. This Court has personal jurisdiction over the Defendants, and venue is proper in this Court pursuant to 28 U.S.C. §§1391(b), (c), and 1400.

**IV. PLAINTIFF'S PATENTS**

10. The Patents relate to automated call distribution centers. In accordance with aspects of the patents, one or more servers provides network service to a customer, including a remote help option selectable by the customer (e.g., "click to chat"). Upon selection of the remote help option, a help request is sent to a call center identifying a way in which the customer can be reached. The customer can then be contacted and the help request handled correctly and efficiently.

11. Pragmatus owns all substantial rights in and to the Patents, including all rights to recover for all past and future infringements thereof.

**V. DEFENDANTS' ACTS**

12. Defendants make, provide, use, and/or distribute infringing systems. The infringing systems include, for example, Defendants' live chat, in which a web site user engages in a real-time or near real-time text chat over the internet with a customer service agent, and related customer service communication channels, including email.

13. With knowledge of the Patents, Defendants provide related services and instructions for the infringing operation of such systems and methods to their customers.

14. Through their actions, Defendants have infringed the Patents and actively and

knowingly induced others, including their customers, to infringe the Patents throughout the United States. Defendants have had knowledge of the Patents and their infringement since at least, and through, the filing and service of the Original Complaint on January 27, 2012. Moreover, Pragmatus provided additional notice of Defendants' infringement of the Patents by virtue of a letter dated March 28, 2012.

15. Despite this knowledge, Defendants continue to commit tortious conduct by way of patent infringement. Defendants possessed, and continue to possess, the specific intent to encourage others, including their customers who access Defendants' websites and engage the infringing functionality, to infringe the Patents. Defendants instruct and encourage their web site visitors to infringe the Patents by providing hyperlinks, downloadable markup, script, and/or code executable on their customers' computers, and textual instructions such as "Start Chat" and "Ask Us A Question" at the following URL:

- [http://shop.advanceautoparts.com/webapp/wcs/stores/servlet/content\\_contactus](http://shop.advanceautoparts.com/webapp/wcs/stores/servlet/content_contactus).

16. Pragmatus has been and will continue to suffer damages as a result of Defendants' infringing acts unless and until enjoined.

### **COUNT ONE**

#### **PATENT INFRINGEMENT—U.S. PATENT NO. 6,311,231**

17. Plaintiff Pragmatus realleges and incorporates herein paragraphs 1–16.

18. Defendants have directly infringed the '231 Patent through their own actions and the actions of their agents and those whom they direct and control.

19. Defendants have indirectly infringed the '231 Patent by inducing the infringement of the '231 Patent.

20. Defendants' aforementioned acts have caused damage to Pragmatus and will continue to do so unless and until enjoined.

**COUNT TWO**

**PATENT INFRINGEMENT—U.S. PATENT NO. 6,668,286**

21. Plaintiff Pragmatus realleges and incorporates herein paragraphs 1–16.

22. Defendants directly infringed the '286 Patent through their own actions and the actions of their agents and those whom they direct and control.

23. Defendants have indirectly infringed the '286 Patent by inducing the infringement of the '286 Patent.

24. Defendants' aforementioned acts have caused damage to Pragmatus and will continue to do so unless and until enjoined.

**COUNT THREE**

**PATENT INFRINGEMENT—U.S. PATENT NO. 7,159,043**

25. Plaintiff Pragmatus realleges and incorporates herein paragraphs 1–16.

26. Defendants have directly infringed the '043 Patent through their own actions and the actions of their agents and those whom they direct and control.

27. Defendants have indirectly infringed the '043 Patent by inducing the infringement of the '043 Patent.

28. Defendants' aforementioned acts have caused damage to Pragmatus and will continue to do so unless and until enjoined.

## VI. JURY DEMAND

29. Plaintiff Pragmatus hereby demands a jury on all issues so triable.

## VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff Pragmatus respectfully requests that the Court:

- A. Enter judgment that Defendants infringe one or more claims of the Patents-in-Suit literally and/or under the doctrine of equivalents;
- B. Permanently enjoin Defendants, their agents, servants, and employees, and all those in privity with Defendants or in active concert and participation with Defendants, from engaging in acts of infringement of the Patents;
- C. Award Plaintiff Pragmatus past and future damages together with prejudgment and post-judgment interest to compensate for the infringement by Defendants of the Patents in accordance with 35 U.S.C. §284; and
- D. Award Plaintiff Pragmatus its costs, disbursements, attorneys' fees, and such further and additional relief as is deemed appropriate by this Court.

Respectfully submitted,

Dated: July 20, 2012

FARNANLLP

/s/ Brian E. Farnan

Joseph J. Farnan, III (Bar No. 3945)

Brian E. Farnan (Bar No. 4089)

919 North Market Street, 12th Floor

Wilmington, DE 19801

(302) 777-0300

(302) 777-0301 (fax)

bfarnan@farnanlaw.com

Andrew G. DiNovo (admitted *pro hac vice*)

Adam G. Price (admitted *pro hac vice*)

Chester J. Shiu (admitted *pro hac vice*)

DiNovo Price Ellwanger & Hardy LLP

7000 N. MoPac Expressway, Suite 350

Austin, Texas 78731

Telephone: (512) 539-2626  
Telecopier: (512) 539-2627

*Attorneys for Plaintiff*